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No. 143

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In the Supreme Court of the United States

OCTOBER TERM, 1957

MYER KLIG, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES

On Writ of Certiorari To the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

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The complaint in this case attacked an order of deportation which was based on a finding that, under the special provisions of the Internal Security Act of 1950, an alien who had been a member of the Communist Party of a foreign state (Canada), but had terminated his membership before his entry into the United States in 1941, could be deported because of such membership. Upon reconsideration of the problem after the case reached this Court, the Immigration and Naturalization Service reached

the conclusion that, since the terms of the statute were not clear, the petitioner should not be held deportable on this ground. Accordingly, the Assistant Commissioner of the Service made a motion before the Board of Immigration Appeals for withdrawal of the deportation order and termination of the proceedings. A copy of that motion is set forth in the Appendix, *infra*. The motion was granted by the Board in an order of January 30, 1958, a copy of which is also reproduced in the Appendix, *infra*.

As a result of this termination of the proceedings, the cause has become moot. Accordingly, the judgment below should be vacated and the case remanded to the District Court with direction to dismiss the action as moot. See *Garcia* v. *Landon*, 348 U.S. 866; *Jew Sing* v. *Barber*, 350 U.S. 898; *Sawyer* v. *Dollar*, 344 U.S. 806; *United States* v. *Munsingwear, Inc.*, 340 U.S. 36; *Ford* v. *United States*, 355 U.S. 38; *Gunaca* v. *National Labor Relations Board*, 353 U.S. 902.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

FEBRUARY 1958

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A5 277 515
In re: MYER KLIG

IN DEPORTATION PROCEEDINGS

ON BEHALF OF RESPONDENT:
Jack Wasserman, Esquire
Warner Building
Washington, D. C.

CHARGES:

Warrant: Act of October 16, 1918, as amended, prior to entry, affiliated with organization that believes in unlawful damage, injury or destruction of property.

Lodged: Act of October 16, 1918, as amended, by Section 22 of the Internal Security Act of 1950—prior to entry, member of Communist Party of Canada.

MOTION TO THE BOARD OF IMMIGRATION APPEALS

DISCUSSION: The respondent is a native of Russia and naturalized citizen of Canada. He was a member of the Communist Party of Canada from 1929 to July, 1932. He was admitted to the United States for permanent residence in April, 1941, and readmitted on December 18, 1945 as a returning resident. Deportation proceedings against him were begun in February, 1947, and on January 2, 1953 the Board of Immigration Appeals concluded that he was deportable under the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950, on the ground that prior to his entry, he was a member of the Communist Party of Canada. The

Board affirmed its decision in an order entered on June 12, 1953 denying a motion for reconsideration, but authorizing voluntary departure with an alternate order of deportation should the respondent fail to depart.

On April 4, 1957, the United States Court of Appeals, District of Columbia, affirmed the judgment of the lower Court finding the respondent deportable on the charge stated. The United States Supreme Court has granted certiorari and the case is awaiting argument.

The issue presented is whether an alien who had been a member of the Communist Party of a foreign state, but had terminated his membership before his entries in 1941 and 1945, could be deported under the provisions of the Act of October 16, 1918, as amended by the Internal Security Act of 1950.

It has been the administrative view that such an alien was deportable. However, since the bare terms of the Internal Security Act are not plain or clear on the point, and since ambiguous deportation provisions may be construed in favor of the alien, it is now the administrative view that the respondent is not deportable on this ground. The present administrative view finds support in *Berebi* v. *Crossman*, 208 F. 2d 498.

In the light of the foregoing, it is believed that the outstanding order of deportation should be withdrawn and the proceedings terminated.

MOTION IS HEREBY MADE that the outstanding order of deportation be withdrawn and that the proceedings be terminated.

(sgd.) RAYMOND F. FARRELL
Assistant Commissioner
Investigations Division

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

File: A-5277515—New York
In re: MYER KLIG

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT:

Jack Wasserman, Esquire
Warner Building
Washington, D. C.

CHARGES:

Warrant: Act of 1918 (8 USC 137, 1946 Ed.)—Prior to entry, affiliated with organization advocating unlawful damage, injury or destruction of property

Lodged: Act of 1918 as amended by Section 22 of Internal Security Act of 1950 (8 USC 137, 1946 Ed., Supp.; 64 Stat. 987)—Prior to entry, member of Communist Party of Canada

APPLICATION: Termination of proceedings

This case is before us on motion of the Assistant Commissioner that the order of deportation be withdrawn and that the proceedings be terminated.

The respondent is a 53-year-old married male, native of Russia and naturalized Canadian citizen, who last entered the United States on December 18, 1945 as a returning resident. He was admitted for permanent residence on April 2, 1941. He was a member of the Communist Party of Canada from 1929 to about July 1932 and has been found deportable solely on the lodged charge.

It appears that the respondent would not be amenable to deportation under paragraph (6) of Section 241(a) of the Immigration and Nationality Act of 1952 (8 USC 1251(a)(6)) since that is limited to membership in specified organizations after entry into the United States. The Service indicated in its motion that it had previously been the administrative view that an alien, who had been a member of the Communist Party of a foreign state, who had terminated such membership prior to entry into the United States and whose entry antedated the enactment of the Internal Security Act, was nevertheless subject to deportation under the provisions of 8 USC 137, 1946 Ed., as amended by Section 22 of the Internal Security Act of 1950. However, the Service further stated in its motion that the provisions of Section 22 of the Internal Security Act are not entirely clear on this point and that it has reversed its position on the matter and now considers that the respondent is not subject to deportation. The Service has, therefore, moved that the outstanding order of deportation be withdrawn and that the proceedings be terminated. Upon consideration of the matter, we will grant the motion of the Service.

ORDER: It is ordered that the motion of the Service be granted; that the outstanding order and warrant of deportation be withdrawn; and that the proceedings be terminated.

(sgd.) THOS. G. FINUCANE
Chairman

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